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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/811,610	03/20/2001	Julio Huato	3639-0101P	9560

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EXAMINER

CHOI, FRANK I

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 04/01/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/811,610

Applicant(s)

HUATO ET AL.

Examiner

Frank I Choi

Art Unit

1616

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 13 March 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____.

3. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☒ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:


Claim(s) allowed: _____.


Claim(s) objected to: _____.

Claim(s) rejected: _____.

Claim(s) withdrawn from consideration: _____.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____


S. MARK CLARDY
PATENT EXAMINER
GROUP 4200



Continuation of 3. Applicant's reply has overcome the following rejection(s): The 112, 2nd paragraph rejection over claims 1-17,23 relative to the hydrocarbon, aromatic group limitations; the 112,2nd paragraph rejection relative to the formula .

Continuation of 5. does NOT place the application in condition for allowance because: In the first instance the affidavit is unsigned and is directed only to copper tartarate hydroxide, whereas the colloidal cupric compound can have both inorganic and organic anions. With respect to the 35 USC 112, 1st paragraph rejection over claims 1-17, 23, Examiner has duly considered Applicant's arguments but deems them unpersuasive. Attorney arguments do not constitute evidence and Applicant does not appear to have shown that one of ordinary skill would not be required to undue experimentation, in light of the fact, that claims broadly claim a colloidal copper compound in which the anion can be any inorganic or organic anion so long as a colloidal compound is formed, limited examples are provided and the prior art of record appears to indicate that not all copper salts will produce colloidal copper. With respect to the 112, 2nd paragraph rejection over claims 1, 6-10, 14-17, 19, 21,23-25 relative to purification, Examiner has duly considered Applicant's arguments but deems them unpersuasive. Even if adjusting the pH to 3, heating the solution and removing the solid precipitate is not the only way of purifying the copper solution, the fact remains the claim requires that the copper solution be purified but does not appear to contain any steps or limitations other than adding compounds to the solution without removing any impurities or isolating the purified copper solution. Examiner suggests "adding an oxidizing agent and H₃PO₄ to a Cu²⁺ solution and purifying the solution, and raising the pH of the purified solution". With respect to Applicant's response to the rejections over prior art, Examiner has duly considered Applicant's arguments but deems them unpersuasive. Applicant has argued that the colloidal copper of the present invention is different from conventional colloidal copper because the colloidal copper of the present invention does not fall out of solution and separate into a supernatant and cupric precipitate. However, Applicant has not shown that the prior art compositions disclosed in the rejections are different from the colloidal copper of the present invention. Applicant's affidavit only shows the attributes of copper tartarate hydroxide. Further, Applicant's claims do not appear contain any limitations which indicate that the copper colloid does not fall out of solution and separate into a supernatant and cupric precipitate. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 26 USPQ2d 1057 (Fed. Cir. 1993). The rejections over the prior art are maintained.